

## **REMARKS**

This amendment is in response to the final Office Action mailed February 1, 2006. Claims 1-20 are pending in the application. Claim 1 is amended. This amendment is supported in the specification at least at page 9, lines 17-18.

### **1. Claim Objections**

Claim 1 was objected to for having the words "by the computer" appearing to be deleted subject matter of claim 1 at line 8, though lacking deletion markings. However, applicants have reviewed the last amendment filed November 17, 2005 and find that language has been correctly deleted by the use of deletion markings of a strikethrough across the middle of these words, which is in accordance with 37 CFR 1.121(c). Therefore, applicants submit the objection was made in error and ask it to be withdrawn.

### **1. Rejections Under 35 USC §§ 112**

Claim 1 was rejected under 35 USC 112 second paragraph for being indefinite. In particular, claim 1 recited "the percentage" which was noted as lacking antecedent basis. This has been amended to recite "the fraction" for which there is proper antecedent basis. Support for the claim limitation is found in the specification at least at page 9, lines 17-18.

Additionally, claim 1 recited "allowed claims" which was noted as not previously being calculated or defined in the claim language. Applicant submits

that this phrase has appropriate meaning in the insurance industry as an industry recognized term known in the art. Accordingly, it is not required to include a definition in the claim language as it may be construed in accordance with its ordinary meaning in the art. Moreover, this term was recited in the original patent claims and has not heretofore been rejected as being indefinite. Nonetheless, the claim has been amended to more closely adhere the recitation of this term to its use in the specification, such as at page 9, lines 18-20. Therefore, Applicant requests the rejection be withdrawn.

## **2. Claim Rejections Under 35 USC § 103**

### **A. Claims 1-3**

Claims 1-3 were rejected under 35 USC § 103(a) as being obvious over King et al., US 5,704,045 (hereinafter King), in view of Schwab, S., "The International Journal of Insurance Law 1997," 4:28-39, 175-178 (hereinafter Schwab), and further in view of "Hall, R. "Alternatives to Estimation of Claims and Acceleration of Reinsurance Recoverables: The Uniform Receivership Law," (1999) (hereinafter Hall). The rejection is overcome by the present amendments for the reasons noted below.

#### Claims 1-3

Present claim 1 recites "guaranteeing the payment of the fixed dividend to claimants or insureds of the insolvent Insurance Company when said allowed claim matures." The Examiner cited Schwab for this teaching, however, Schwab

fails to teach or suggest to one of skill in the art that the payment is made upon allowed claims that have matured. As the examiner notes, Schwab teaches that the distribution of assets are made on contingent claims to allow those contingent claims to participate in the early disposition of the insolvent insurer's assets. A contingent claim is not a mature claim. Schwab even defines such claim terms at pages 29 and 30.

In contrast to Schwab, claim 1 recites guaranteeing the payment of a fixed dividend when the claims mature, that is, the contingent claims are not paid a dividend early as in Schwab, but the claims are paid late at a predetermined fixed dividend rate only after the contingent claims are allowed and the claims mature. So rather than the mature claims being cut-off when the estate of the insolvent insurance company is depleted – the situation Schwab describes as being avoided by early payoff on the contingent claims, claim 1 provides that the dividend is guaranteed to be paid at a fixed dividend rate when the claim matures.

Schwab suggests that contingent claimants receive a payment based on their estimated claim value of a contingent claim rather than a fixed dividend based on the actual claim amount when it matures as in the applicants' method (see page 9 of present application – claim paid as a percentage of the NOD, which is made when a mature claim is no longer contingent). This procedure in Schwab appears mainly as a device to allow the Liquidator to obtain the reinsurance recoverables prior to the actual value of the "contingent" claims

becoming known, and then paying only against the estimated value of the claim, rather than an NOD liquidated amount as with mature claims. Even at that, there is **no “guarantee”** that those “allowed” contingent claims would receive any dividend as Schwab noted that the Court still “allows reinsurers, and others, to contest whether a claim is subject to estimation and the value of a claim.” (page 176, Ins. 42-44). For this additional reason, Claim 1 is patentable over the combination of cited references.

Further, the Office Action at page 12 relies upon Schwab’s description of the insureds participation in “the final distribution of assets” as teaching a form of guaranteeing payment when the allowed claims mature. However, as noted above, Schwab teaches no guarantee as the estate may be consumed by administrative costs and there may be no assets to distribute to insureds. Moreover, any final distribution is not at a fixed dividend rate as recited by claim 1. Accordingly, Schwab fails to provide the teaching, suggestion or motivation for this limitation, and therefore, no prima facie case of obviousness is made out.

Even in combination with the other cited references, King and Hall, there is no teaching of guaranteeing the payment of a fixed dividend when the allowed claim matures. The Examiner admits King contains no such teachings, and the sections of Hall cited in the rejection of claim 1 teaches payments from the reinsurer to the receiver, and does not refer to a **guaranteed payment** or a **fixed dividend** being paid to the claimants when the claim matures. At pages 13-14 of the Office Action, the rejection states that guaranteed payments of fixed

dividends are not new. However, applicants submit that in the context of insurance receiverships, such payments are new and not obvious because there has been no teaching or suggestion as to how to incorporate guaranteed payments of fixed dividends to mature claims of an insurance receivership. That limitation in combination with the other limitations of claim 1 act in concert to equitably transfer the risks from the insureds to another party, such as the indemnifying agent as recited in claim 4.

Accordingly, claim 1 and its dependent claims are patentable over the cited art. Applicants request that the rejection be withdrawn.

#### Claims 12-15

Claims 12-15 were rejected as being obvious over King, Schwab, Hall further in view of Jenkins. Claims 12-15 depend from claim 1 and should be allowable for at least the same reasons as set forth above for claim 1.

Applicants request that the rejection be withdrawn.

#### **B. Claims 4-9 and 16-18**

Claims 4-9 were rejected as being obvious over King, in view of Schwab in view of Hammond (US 5,712,984). This rejection is traversed for the following reasons.

#### Claims 4-9

Like Claim 1, claim 4 recites that the payments at the guaranteed rates are made on the claims when the claims mature. Schwab teaches making early

payments based on estimated values of the "contingent" claims. Accordingly, for this reason and the reasons noted above with regard to Claim 1, Claim 4 is not obvious over the cited art. Thus, the rejection against independent claim 4 and dependent claims 5-9 should be withdrawn.

#### Claims 16-18

Claims 16-18 were rejected as being obvious over King, Schwab, Hall further in view of Jenkins. Claims 16-18 depend from claim 4 and should be allowable for at least the same reasons as set forth above for claim 4. Applicants request that the rejection be withdrawn.

#### **C. Claim 10-11 and 19-20**

Claims 10-11 were rejected under 35 USC § 103(a) as being obvious over Hammond et al., US 5,712,984 (hereinafter Hammond) in view of King et al., US 5,704,045 (hereinafter King). The rejection is traversed for the reasons noted below.

#### Claim 10

Like Claim 1, independent claim 10 recites that the payments at the guaranteed rates are made on the claims when the claims mature. In connection with claim 1, the rejection admitted that this King fails to disclose this limitation. The portion of King cited for this limitation in claim 10 fails to teach that the insolvent Insurer is indemnified for a guaranteed payment rate of the mature claims. Hammond also fails to teach this limitation. As discussed above in

connection with claim 1, Schwab (while not relied on here) also fails to teach making payments based on estimated values of the "contingent" claims. In combination these references do not suggest to one of ordinary skill in the art to modify their teachings to obtain this claimed limitation in the context of the claimed process, even assuming the concept of guaranteed payment rates in other applications are not new. Accordingly, for this reason and the reasons noted above with regard to Claim 1, Claim 10 is not obvious over the cited art. Thus, the rejection against independent claim 10 and dependent claim 11 should be withdrawn.

#### Claims 19-20

Claims 19-20 were rejected as being obvious over King, Schwab, Hall further in view of Jenkins. Claims 19-20 depend from claim 10 and should be allowable for at least the same reasons as set forth above for claim 10.

Applicants request that the rejection be withdrawn.

### **3. Conclusion**

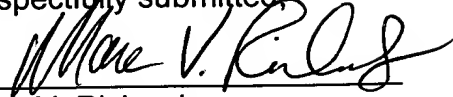
Applicants respectfully submit that the rejections have been overcome in view of the amendments and above remarks, and that the present claims are in

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condition for allowance. The Examiner is kindly requested to phone the undersigned to clarify any remaining issues to expedite allowance.

Dated: 12/22/06

Respectfully submitted,



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